



Common Sense Initiative

Mike DeWine, *Governor*
Jon Husted, *Lt. Governor*

Joseph Baker, *Director*

Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Job and Family Services

Rule Contact Name and Contact Information:

Michael Lynch, 614 466-8376, michael.lynch@jfs.ohio.gov

Regulation/Package Title (a general description of the rules' substantive content):

Common Paymaster

Rule Number(s): 4141-11-13

Date of Submission for CSI Review: 9/10/2024

Public Comment Period End Date: 9/17/2024

Rule Type/Number of Rules:

1 New Rules – Year Review

No Change - FYR

Amended - FYR

1 Rescinded Rules - Year Review

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. Requires specific expenditures or the report of information as a condition of compliance.
- d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

4141-11-13- “Concurrent employment and reorganization among substantially commonly owned, managed, or controlled employers”. Each employer shall report and make required payments as provided by Chapter 4141. of the Revised Code with respect to its account as maintained by the director. One legal entity may not report or make payments for another legal entity by what may be known as a common paymaster arrangement or by some other similar arrangement. The proposed rule changes allow a few narrow exceptions to account for concurrent employers who are substantially commonly owned, managed, or controlled or who are reorganizing their structure.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

4141.13, 4141.24

4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

Yes, the rules implement federal guidelines as directed by the Department of Labor pursuant to the Federal Unemployment Tax Act. 26 USC 3301 through 26 USC 3311.

- 5. If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

No, the rules do not include provisions exceeding federal requirements.

- 6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

Rule 4141-11-13: This rule helps employers understand that each legal entity is responsible to report and make payments on their own employer account pursuant to Section 4141.24(A) of the ORC. Without this rule employers with common ownership, management, or control, but that are separate and distinct legal entities, would not understand that one legal entity may not report or make payments for the other legal entities as a common paymaster or under a similar arrangement.

- 7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

Rule 4141-11-13: This rule assists employers in understanding that each legal entity must report and make payments on their own employer account. The success of this rule can be measured by the fact that all employers file and pay under their own employer account as separate and distinct legal entities. Thus, because the current form of this rule has been in place since September 28, 2010, with the full knowledge and cooperation of employers, the Agency has proposed no changes to the language of this rule.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

- 9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Agency's clearance process allows all employer and claimant/employee stakeholder interests to review and comment on any rule online. The Ohio Chamber of Commerce, Policy Matters Ohio, and the National Federation of Independent Business (NFIB) are among those stakeholders that the Agency has identified as receiving clearance notification of these rules. The idea of clarifying this rule was brought to ODJFS by members of the business community.

10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The Agency received no comments or questions during the online clearance time period from August 22, 2024, through August 29, 2024.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

No scientific data was used to develop the rules or the measurable outcomes of the rules.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

None, the rules reflect the directives of the DOL pursuant to the Federal Unemployment Tax Act and Chapter 4141 of the Ohio Revised Code.

No, this would not apply because the agency is directed by the DOL and the ORC.

13. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The agency's legal and subject matter experts carefully review all rule language to ensure no redundancy or duplication occurs.

14. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The Agency's plan for implementation is to strictly follow federal guidelines as defined by the DOL and by the Ohio General Assembly through the ORC.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community; Rule 4141-11-13: Approximately 220,000 employers file reports and pay into the Ohio Unemployment Compensation Trust Fund as required by federal and state law.

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a representative business. Please include the source for your information/estimated impact.

The nature of the adverse impact is the time expended by employers for compliance with these rules.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

No.

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

To the extent that these rules may impose an adverse impact to the regulated business community, the justification points to the Agency's statutory requirements as identified in ORC Sections 119.03, 4141.13, 4141.14, 4141.24, 4141.48, and in the federal guidelines as directed by the Department of Labor pursuant to the Federal Unemployment Tax Act, 26 USC 3301 through 3311.

Regulatory Flexibility

18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No, the intent of the unemployment compensation rules is to treat all Ohio employers equally. The Federal Department of Labor and the Ohio General Assembly structured these rules in such a manner so that the Agency does not have discretionary authority to allow different

standards, based upon size, for the various employers paying into the Unemployment Trust Fund.

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

The Agency allows for a waiver of fines (interest) and penalties for paperwork violations and first-time offenders by request. The request may be made in writing, online, or by phone. However, this rule does not impose any fine or penalties.

20. What resources are available to assist small businesses with compliance of the regulation?

The agency provides an online website, telephone assistance, and small businesses may contact the Unemployment Insurance Tax Contribution Division in Columbus. Small businesses may also contact the Unemployment Insurance Tax Compliance Division in Columbus or in 12 local compliance divisions throughout Ohio to speak to or meet with a local compliance auditor. Finally, employers may ask questions through the online State of Ohio Unemployment Resource for Claimant and Employers (SOURCE).